

the testimony, and shall set forth a summary of the testimony sought and its relevance to the proceedings. The affidavit or statement must be submitted before permission to testify may be granted. The Director may, upon request and for good cause shown, waive the requirement of this paragraph.

(4) *Time limit for serving request or demand.* The request or demand, together with the affidavit or statement (if required by paragraph (e)(3) of this section), shall be served at least 5 working days prior to the scheduled date of testimony or disclosure of records, in order to ensure that the Director has adequate time to consider whether to grant the request or demand. The Director may, upon request and for good cause shown, waive the requirement of this paragraph.

(5) *Factors to be considered in determining whether a request or demand will be granted.* The Director shall consider whether granting the request or demand would be appropriate under the relevant rules of procedure and substantive law concerning privilege. Among the requests or demands that will not be granted are those that would, if granted, result in—

(i) The violation of a statute, such as 26 U.S.C. 6103 or 7213, or a rule of procedure, such as the grand jury secrecy rule (F.R.Cr.P. Rule 6(e)), or a specific regulation;

(ii) The disclosure of classified information;

(iii) The disclosure of a confidential source or informant, unless the ATF officer or employee and the source or informant, have no objection;

(iv) The disclosure of investigative records compiled for law enforcement purposes if enforcement proceedings would thereby be impeded, or of investigative techniques and procedures whose effectiveness would thereby be impaired, unless the Director determines that the administration of justice requires disclosure;

(v) The disclosure of trade secrets without the owner's consent; or

(vi) Testimony in a case in which ATF has no interest, records or other official information.

(f) *State cases.* Regional directors (compliance), special agents in charge, chiefs of field laboratories, and re-

gional administrative officers, may, in the interest of Federal and State law enforcement, upon receipt of demands or requests of State authorities, and at the expense of the State, authorize employees under their supervision to attend trials and administrative hearings in liquor, tobacco, firearms, or explosives cases in which the State is a party or on behalf of the State in any criminal case, to produce records, and to testify as to facts coming to their knowledge in their official capacities. However, in cases where a defendant in a criminal case requests or demands testimony or the production of ATF records or information, authorization from the Director is required. Production or testimony may not divulge information contrary to 26 U.S.C. 6103 and 7213, or 12 U.S.C. 3412. See also 18 U.S.C. 1905.

(g) *Penalties.* Any ATF officer or employee who disobeys the provisions of this section will be subject to dismissal and may incur criminal liability.

[T.D ATF-57, 44 FR 27094, May 9, 1979, as amended by T.D. ATF-302, 55 FR 47325, Nov. 13, 1990. Redesignated by T.D. ATF-378, 61 FR 29955, June 13, 1996]

PART 72—DISPOSITION OF SEIZED PERSONAL PROPERTY

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- 72.81 Authority for disposal.

AUTHORITY: 18 U.S.C. 921, 1261; 19 U.S.C. 1607, 1610, 1612, 1613, 1618; 26 U.S.C. 7101, 7322–7325, 7326, 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 40 U.S.C. 304(k); 49 U.S.C. 784, 788.

SOURCE: T.D. ATF-9, 39 FR 9954, Mar. 15, 1974, unless otherwise noted.

Subpart A—Scope of Regulations

§ 72.1 Procedures relating to personal property and carriers.

Regulations in this part shall relate to personal property and carriers seized by alcohol, tobacco and firearms officers as subject to forfeiture as being involved, used, or intended to be used, as the case may be, in any violation of Federal laws.

§ 72.2 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part, or necessary for its administration. All of the information called for in each form shall be furnished as indicated by

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the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) “Public Use Forms” (ATF Publication 1322.1) is a numerical listing of forms issued or used by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

[T.D. ATF-92, 46 FR 46914, Sept. 23, 1981, as amended by T.D. ATF-249, 52 FR 5962, Feb. 27, 1987]

Subpart B—Definitions

§ 72.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meanings ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms “includes” and “including” do not exclude things not enumerated which are in the same general class.

ATF Officer. An officer or employee of the Bureau of Alcohol, Tobacco, and Firearms (ATF) duly authorized to perform any function relating to the administration or enforcement of this part.

Appraised value. The value placed upon seized property or carriers by the appraiser or appraisers designated for the purpose of determining whether the property or carriers may be forfeited administratively.

Carrier. A vessel, vehicle, or aircraft seized under 49 U.S.C. Chapter 11 for having been used to transport, carry, or conceal a contraband firearm or contraband cigarettes. Vessels, vehicles, or aircraft seized under other provisions of applicable laws shall be considered personal property.

Commercial crimes. Any of the following types of crimes (Federal or State): Offenses against the revenue laws; burglary; counterfeiting; forgery; kidnapping; larceny; robbery; illegal sale or

possession of deadly weapons; prostitution (including soliciting, procuring, pandering, white slaving, keeping house of ill fame, and like offenses); extortion; swindling and confidence games; and attempting to commit, conspiring to commit, or compounding any of the foregoing crimes. Addiction to narcotic drugs and use of marihuana will be treated as if such were commercial crime.

Contraband cigarettes. Any quantity of cigarettes in excess of 60,000, if:

(a) The cigarettes bear no evidence of the payment of applicable State cigarette taxes in the State where the cigarettes are found;

(b) The State in which the cigarettes are found requires a stamp, impression, or other indication to be placed on packages or other containers of cigarettes to evidence payment of cigarette taxes; and

(c) The cigarettes are in the possession of any person other than any person who is:

(1) Holding a permit issued under 26 U.S.C. Chapter 52 as a manufacturer of tobacco products or as an export warehouse proprietor;

(2) Operating a customs bonded warehouse under 19 U.S.C. 1311 or 1555;

(3) An agent of a tobacco products manufacturer, an export warehouse proprietor, or an operator of a customs bonded warehouse;

(4) A common or contract carrier transporting the cigarettes involved under a proper bill of lading or freight bill which states the quantity, source, and destination of the cigarettes;

(5) Licensed or otherwise authorized by the State where the cigarettes are found to account for and pay cigarette taxes imposed by that State; and who has complied with the accounting and payment requirements relating to the license or authorization with respect to the cigarettes involved; or

(6) An agent of the United States, of an individual State, or of a political subdivision of a State and having possession of cigarettes in connection with the performance of official duties.

(7) Operating within a foreign-trade zone, established under 19 U.S.C. 81b, when the cigarettes involved have been entered into the foreign-trade zone

under zone-restricted status or when foreign cigarettes have been admitted into the foreign-trade zone but have not been entered into the United States.

Contraband firearm. A firearm with respect to which there has been committed a violation of the National Firearms Act (26 U.S.C., Chapter 53) or any regulation issued thereunder.

Director. The Director, Bureau of Alcohol, Tobacco, and Firearms, the Department of the Treasury, Washington, DC.

Equity. As used in administrative action on petitions for remission or mitigation of forfeitures, shall mean that interest which a petitioner has in the personal property or carrier petitioned for at the time of final administrative action on the petition, but such interest shall not be considered to include any unearned finance charges from the date of seizure or the date of default, if later; any amount rebatable on account of paid insurance premiums; attorney's fees for collection; any amount identified as dealer's reserve; or any amount in the nature of liquidated damages that may have been agreed upon by the buyer and the petitioner.

Person. An individual, trust, estate, partnership, association, company or a corporation.

Re-appraisal. An up-to-date statutory appraisal to determine the present value of the property or carrier involved in a petition for remission or mitigation of forfeiture made in the same manner as the original appraisal, and performed at the written request of the petitioner whose petition in regard to the property or carrier has been allowed and who, for reasonable cause, is not satisfied that the original appraisal represents the present value of the property or carrier.

Region. A Bureau of Alcohol, Tobacco, and Firearms Region.

U.S.C. The United States Code.

[T.D. ATF-48, 43 FR 13535, Mar. 31, 1978; 44 FR 55841, Sept. 28, 1979, as amended by T.D. ATF-65, 45 FR 8593, Feb. 8, 1980; T.D. ATF-183, 49 FR 37061, Sept. 21, 1984]

Subpart C—Seizures and Forfeitures

§ 72.21 Personal property and carriers subject to seizure.

(a) Personal property may be seized by duly authorized ATF officers for forfeiture to the United States when involved, used, or intended to be used, in violation of the laws of the United States which ATF officers are empowered to enforce, including Title 18 U.S.C. Chapters 40 (explosives), 44 (firearms), 59 (liquor traffic), 114 (contraband cigarettes), 229 (liquor); Title 26 U.S.C. Chapters 51 (distilled spirits), 52 (tobacco), 53 (firearms); and Title 27 U.S.C. 206 (liquor). Carriers, as defined in § 72.11, similarly may be seized when used in violation of Title 49 U.S.C. App., Chapter 11 (transportation, et cetera) of contraband firearms or contraband cigarettes.

(b) Any action or proceeding for the forfeiture of firearms or ammunition seized under 18 U.S.C. Chapter 44 shall be commenced within 120 days of such seizure.

(c) Upon acquittal of the owner or possessor, or the dismissal of the criminal charges against such person other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which such person is subject, firearms or ammunition seized or relinquished under 18 U.S.C. Chapter 44 shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law.

[T.D. ATF-270, 53 FR 10489, Mar. 31, 1988, as amended by T.D. ATF-363, 60 FR 17449, Apr. 6, 1995]

§ 72.22 Forfeiture of seized personal property and carriers.

(a) *Administrative forfeiture.* (1) Personal property seized as subject to forfeiture under Title 26 U.S.C. which has an appraised value of \$100,000.00 or less, and any carrier appraised by the seizing officer at \$100,000.00 or less under the customs laws, shall be forfeited to the United States in administrative or summary forfeiture proceedings.

(2) In respect of personal property seized as subject to forfeiture under title 26 U.S.C. which, in the opinion of the seizing officer, has an appraised value of \$100,000.00 or less, such officer shall cause a list containing a particular description of the seized property to be prepared and an appraisal thereof to be made by three sworn appraisers, selected by the seizing officer, who shall be respectable and disinterested citizens of the United States residing within the internal revenue district wherein the seizure was made. Such list and appraisal shall be properly attested to by the seizing officer and such appraisers.

(3) In respect of personal property seized as subject to forfeiture under title 26 U.S.C. and found by the appraisers to have a value of \$100,000.00 or less, the Director or his delegate shall publish a notice once a week for three consecutive weeks, in some newspaper of the judicial district where the seizure was made, describing the articles and stating the time, place, and cause of their seizure, and requiring any person claiming them to make such claim within 30 days from the date of the first publication of such notice.

(4) In respect of carriers seized as subject to forfeiture under the customs laws which, in the opinion of the seizing officer, have an appraised value of \$100,000.00 or less, such officer shall cause a list containing a particular description of the seized carriers to be prepared and the seizing officer shall make the appraisal thereof. Such list and appraisal shall be properly attested to by the seizing officer.

(5) In respect of carriers seized as subject to forfeiture under the customs laws and appraised by the seizing officer as having a value of \$100,000.00 or less, the Director or his delegate shall publish a notice of seizure in the same manner as required by paragraph (a)(3) of this section; provided that the time for making claim shall be within 20 days from the date of first publication. (19 U.S.C. 1608).

(6) Any person claiming the personal property or carrier so seized, within the time specified in the notice, may file with the Director a claim stating the interest in the articles or carrier seized, and may execute a bond to the

United States, conditioned that, in case of condemnation of the articles or carrier so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation. The amount of the cost bond is \$2,500.00, unless the seized property is a vehicle, vessel, or aircraft seized for a violation of 49 U.S.C. App., Chapter 11, in which case the cost bond shall be in the amount of \$2,500 or ten percent of the value of the claimed property, whichever is lower, but not less than \$250.00. Both the claim and the cost bond shall be executed in quadruplicate.

(b) *Judicial condemnation.* The Chief Counsel of the Bureau of Alcohol, Tobacco and Firearms, shall authorize institution of forfeiture proceedings in those instances where the appraised value of the seized personal property or carrier exceeds \$100,000.00 or where a claim and cost bond are filed.

(Sec. 111, Pub. L. 95-410, 92 Stat. 897, as amended (19 U.S.C. 1607, 1610, 1612))

[T.D. ATF-9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF-65, 45 FR 8593, Feb. 8, 1980; T.D. ATF-183, 49 FR 37061, Sept. 21, 1984; T.D. ATF-241, 51 FR 39613, Oct. 29, 1986; T.D. ATF-270, 53 FR 10489, Mar. 31, 1988]

§ 72.23 Type and conditions of cost bond.

The cost bond delivered by a claimant to effect removal of the forfeiture status of the property or carrier claimed to the jurisdiction of the Federal court for adjudication shall be a corporate surety bond: *Provided, however,* That upon a showing to the satisfaction of the Director or his delegate that the claimant is unable to furnish a corporate surety bond such claimant may deliver a cost bond with individual sureties acceptable to the Director or his delegate: *Provided further,* That in lieu of a cost bond with corporate or individual sureties the claimant may deposit collateral as provided in § 72.25. The cost bond shall be conditioned that in the case of the condemnation of the property the obligors shall pay all costs and expenses of the proceedings to obtain such condemnation.

[T.D. ATF-9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF-183, 49 FR 37061, Sept. 21, 1984]

§ 72.24 Corporate surety bonds.

(a) Corporate surety bonds may be given only with surety companies holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds, subject to the limitations prescribed by Treasury Department Circular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies), and subject to such amendments as may be issued from time to time.

(b) Treasury Department Circular No. 570 is published in the FEDERAL REGISTER yearly as of the first workday of July. As they occur, interim revisions of the circular are published in the FEDERAL REGISTER. Copies may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, DC 20226.

(July 30, 1947, Ch. 390, 61 Stat. 648, as amended (6 U.S.C. 6, 7); Aug. 16, 1954, Ch. 736, 68A Stat. 847, as amended (26 U.S.C. 7101))

[T.D. ATF-92, 46 FR 46914, Sept. 23, 1981]

§ 72.25 Deposit of collateral.

(a) Bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by claimants as collateral security in lieu of corporate sureties in accordance with the provisions of Treasury Department Circular No. 154 (31 CFR Part 225—Acceptance of Bonds, Notes or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds). Alternatively, cash, postal money orders, and certified or cashiers' or treasurers' checks may be furnished by claimants as collateral security in lieu of corporate sureties.

(b) Treasury Department Circular No. 154 is periodically revised and contains the provisions of 31 CFR Part 225 and the forms prescribed in 31 CFR Part 225. Copies of the circular may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, DC 20226.

§ 72.26

(July 30, 1947, Ch. 390, 61 Stat. 650 (6 U.S.C. 15); Aug. 16, 1954, Ch. 736, 68A Stat. 847, as amended (26 U.S.C. 7101))

[T.D. ATF-92, 46 FR 46914, Sept. 23, 1981]

§ 72.26 Bond for return of seized perishable goods.

The proceedings to enforce forfeiture of perishable goods shall be in the nature of a proceeding in rem in the district court of the United States for the district wherein such seizure is made. Whenever such property is liable to perish or become greatly reduced in price or value by keeping, or when it cannot be kept without great expense, the Director or his delegate shall advise the owner, when known, of the seizure thereof. The owner may apply to the Director or his delegate to have the property examined any time prior to referral of the property to the U.S. Marshal for disposition, and if in the opinion of the Director or his delegate it shall be necessary to sell such property to prevent waste or expense, the Director or his delegate shall cause the property to be appraised. Thereupon the owner shall have the property returned to him upon giving a corporate surety bond (see § 72.24) in an amount equal to the appraised value of the property, which bond shall be conditioned to abide the final order, decree, or judgment of the court having cognizance of the case, and to pay the amount of the appraised value to the Director or his delegate, the U.S. Marshal, or otherwise, as may be ordered and directed by the court, which bond shall be filed by the Director or his delegate officer with the U.S. Attorney for the district in which the proceedings may be commenced. If the owner of such property neglects or refuses to give such bond within a reasonable time considering the condition of the property the Director or his delegate shall request the U.S. Marshal to proceed to sell the property at public sale as soon as practicable and to pay the proceeds of sale, less reasonable costs of the seizure and sale, to the court to abide its final order, decree, or judgment.

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(68A Stat. 869, 870, as amended; 26 U.S.C. 7322, 7323, 7324)

[T.D. ATF-9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF-183, 49 FR 37061, Sept. 21, 1984]

§ 72.27 Summary destruction of explosives subject to forfeiture.

(a) Notwithstanding the provisions of § 55.166 of this Title, in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture in which it would be impracticable or unsafe to remove the materials to a place of storage or would be unsafe to store them, the seizing officer may destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least 1 credible witness.

(b) Within 60 days after any destruction made pursuant to paragraph (a) of this section, the owner of the property and any other persons having an interest in the property so destroyed may make application to the Director for reimbursement of the value of the property in accordance with the instructions contained in ATF Publication 1850.1 (9-93), Information to Claimants. ATF P 1850.1 is available at no cost upon request from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5950. The Director shall make an allowance to the claimant not exceeding the value of the property destroyed, if the claimant establishes to the satisfaction of the Director that—

(1) The property has not been used or involved in a violation of law; or

(2) Any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness.

[T.D. ATF-363, 60 FR 17449, Apr. 6, 1995]

Subpart D—Remission or Mitigation of Forfeitures

§ 72.31 Laws applicable.

Remission or mitigation of forfeitures shall be governed by the applicable customs laws.

(Sec. 613, 618, 46 Stat. 756, as amended, 757, as amended, sec. 4, 53 Stat. 1292, sec. 7327, 68A

Stat. 871; 19 U.S.C. 1613, 1618, 49 U.S.C. 784, 26 U.S.C. 7327)

§ 72.32 Interest claimed.

Any person claiming an interest in property, including carriers, seized by alcohol, tobacco and firearms officers as subject to administrative forfeiture may file a petition addressed to the Director, for remission or mitigation of the forfeiture of such property.

§ 72.33 Form of the petition.

There is no set or standardized form provided or required by the Department for use in filing a petition for remission or mitigation of forfeiture. However, it is preferable that the petition be typewritten on legal size paper; and it is necessary that the petition be executed under oath, prepared in triplicate and addressed to the Director, and that all copies of original documents submitted as exhibits in support of allegations of the petition be certified as true and accurate copies of originals. Each copy of the petition must contain a complete set of exhibits.

§ 72.34 Contents of the petition.

(a) *Description of the property.* The petition should contain such a description of the property or carrier and such facts of the seizure as will enable the alcohol, tobacco and firearms officers concerned to identify the property or carrier.

(b) *Statement regarding knowledge of seizure.* In the event the petition is filed for the restoration of the proceeds derived from sale of the property or carrier pursuant to summary forfeiture, it should also contain, or be supported by, satisfactory proof that the petitioner did not know of the seizure prior to the declaration or condemnation of forfeiture, and that he was in such circumstances as prevented him from knowing of the same. (See also § 72.35.)

(c) *Interest of petitioner.* The petitioner should state in clear and concise terms the nature and amount of the present interest of the petitioner in the property or carrier, and the facts relied upon to show that the forfeiture was incurred without willful negligence or without any intention upon the part of

the petitioner to defraud the revenue or to violate the law, or such other mitigating circumstances as, in the opinion of the petitioner, would justify the remission or mitigation of the forfeiture.

(d) *Petitioner innocent party.* If the petitioner is not the one who in person committed the act which caused the seizure the petition should state how the property or carrier came into the possession of such other person, and that the petitioner had no knowledge or reason to believe, if such be the fact, that the property or carrier would be used in violation of law. If known to the petitioner, at the time the petition is filed, that such other person had either a record or a reputation, or both, as a violator in the field of commercial crime, the petition should state whether the petitioner had actual knowledge of such record or reputation, or both, before the petitioner acquired his interest in the property or carrier, before such other person acquired his right in the property or carrier, whichever occurred later. When personal property is seized for violation of the liquor laws, the determining factor will be whether the person dealt with by the petitioner had either a record or a reputation, or both, as a violator of the liquor laws.

(e) *Documents supporting claim.* The petition should also be accompanied by copies, certified by the petitioner under oath as correct, of contracts, bills of sale, chattel mortgages, reports of investigators or credit reporting agencies, affidavits, and any other papers or documents that would tend to support the claims made in the petition.

(f) *Costs.* The petition should also contain an undertaking to pay the costs, if costs are assessed as a condition of allowance of the petition. Costs shall include all the expenses incurred in seizing and storing the property or carrier; the costs borne or to be borne by the United States; the taxes, if any, payable by the petitioner or imposed in respect of the property or carrier to which the petition relates; the penalty, if any, asserted by the Director; and, if the property or carrier has been sold, or is in the course of being sold, the expenses so incurred.

§ 72.35 Time of filing petition.

A petition may be filed at any time prior to the sale or other disposition of the property or carrier involved pursuant to administrative forfeiture, but a petition in regard to property or a carrier which has already been sold or otherwise disposed of pursuant to administrative forfeiture must be filed within three months from the date of sale, and must contain the proof defined in § 72.34(b). Acquisition for official use is equivalent to sale so far as remission or mitigation of any forfeiture is concerned.

(Sec. 306, 49 Stat. 880; 40 U.S.C. 304k)

§ 72.36 Place of filing.

The petition should be filed in triplicate with the Director or his delegate for the region in which the seizure was made.

[T.D. ATF-9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF-183, 49 FR 37061, Sept. 21, 1984]

§ 72.37 Discontinuance of administrative proceedings.

If the petition is filed prior to administrative sale or retention for official use, proceedings to effect such sale or retention will be discontinued.

§ 72.38 Return of defective petition.

If the petition is defective in some correctable respect, the original of the petition will be returned by letter to the petitioner for his submission of a corrected petition, in triplicate, within a reasonable time.

§ 72.39 Final action.

(a) *Petitions for remission or mitigation of forfeiture.* (1) The Director shall take final action on any petition filed pursuant to these regulations. Such final action shall consist either of the allowance or denial of the petition. In the case of allowance, the Director shall state the conditions of the allowance.

(2) In the case of an allowed petition, the Director may order the property or carrier returned to the petitioner, sold for the account of the petitioner, or, pursuant to agreement, acquired for official use.

(3) The Director or his delegate shall notify the petitioner of the allowance

or denial of the petition and, in the case of allowance, the terms and conditions under which the Director allowed the petition.

(b) *Offers in compromise of liability to forfeiture.* The Director or his delegate shall take final action on any offer in compromise of the liability to forfeiture of personal property, including carriers, seized as provided in § 72.21. Such action shall consist either of the acceptance or rejection of the offer.

[T.D. ATF-9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF-183, 49 FR 37061, Sept. 21, 1984]

§ 72.40 Acquisition for official use and sale for account of petitioner in allowed petitions.

(a) *Acquisition for official use.* The property or carrier may be purchased by the United States pursuant to agreement and retained for official use. Where the petitioner is the owner, the purchase price is the appraised value of the property or carrier less all costs. Where the petitioner is a creditor, the purchase price is whichever one of these amounts is the smaller: (1) The petitioner's equity, or (2) the appraised value of the property or carrier less the amount of all costs incident to the seizure and forfeiture.

(b) *Sale for account of petitioner.* The petitioner may elect not to comply with the condition on which the property or carrier may be returned. In this event, the Director or his delegate is authorized to sell it. Where the petitioner is the owner of the property or carrier, there is deducted from the proceeds of the sale all costs incident to the seizure, forfeiture, and sale, and the Director or his delegate pays to the petitioner, out of the proper appropriation, an amount equal to the balance, if any. Where the petitioner is a creditor, there is deducted from the proceeds of the sale all costs incident to the seizure, forfeiture, and sale, and the Director or his delegate pays to the petitioner, out of the proper appropriation, an amount equal to the balance, if any, of the selling price after deduction of all costs incident to the seizure, forfeiture, or sale: *Provided*, That if the amount of such balance exceeds the amount of the equity of the petitioner,

only the latter amount is paid to the petitioner.

[T.D. ATF-9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF-183, 49 FR 37061, Sept. 21, 1984]

§ 72.41 Re-appraisal of property involved in an allowed petition.

In determining the nature and extent of the relief to be afforded a petitioner pursuant to allowance of his petition, the value of the property or carrier involved in the allowed petition shall be considered to mean the value placed on said property or carrier pursuant to official appraisal thereof immediately following seizure: *Provided, however*, That if the petitioner desires an up-to-date re-appraisal made of the property or carrier, after notification as to the terms of allowance of the petition, and makes written request therefor, undertaking in said request to pay, or to be liable for, the total costs of such re-appraisal, the property or carrier shall be re-appraised officially in the same manner in which the original appraisal was made, and the terms and conditions of allowance shall stand modified to the extent required by such re-appraisal.

Subpart E—Appraiser's Fees

§ 72.51 Rate of compensation.

Each appraiser selected under § 72.22(a)(2) shall receive compensation at a reasonable fee not to exceed \$15.00 per hour or portion thereof for the performance of his or her duties in appraising property seized as subject to forfeiture under Title 26 U.S.C.

(Act of Aug. 16, 1954, Ch. 736, 68A Stat. 870, as amended; 26 U.S.C. 7325)

[T.D. ATF-8, 46 FR 18536, Mar. 25, 1981]

Subpart F—Administrative Sale or Disposition of Personal Property

§ 72.61 Alternative methods of sale.

(a) *Sale by auction or competitive bid.* When personal property or a carrier. When personal property or a carrier forfeited administratively may be sold, the Director or his delegate shall cause a notice of sale to be placed in a newspaper of general circulation published

in the judicial district wherein the seizure was made. The sale shall not occur in less than 10 days from the date of the publication of the notice. At the discretion of the Director or his delegate based upon which method in his sound judgment is most advantageous to the best interests of the United States, the forfeited personal property or carrier may be advertised for sale, and sold, at public auction to the highest bidder on open, competitive bids, or to the highest bidder on sealed, competitive bids.

(b) *Sale by General Services Administration.* When a vessel, vehicle, or aircraft seized under 49 U.S.C. App., Chapter 11 is forfeited administratively, the Director may authorize the General Services Administration to conduct the sale pursuant to such conditions as the Director deems proper.

(68A Stat. 870, as amended; 26 U.S.C. 7325)

[T.D. ATF-9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF-183, 49 FR 37061, Sept. 21, 1984; T.D. ATF-241, 51 FR 39613, Oct. 29, 1986; T.D. ATF-270, 53 FR 10489, Mar. 31, 1988]

§ 72.62 All bids on unit basis.

All competitive bids, whether sealed or otherwise, shall be on a unit basis, i.e. if a number of forfeited automobiles are advertised for sale at the same date, hour and place, whether or not in the same notice of sale, there shall be a separate, individual bid required as to each automobile, and it shall not be permissible to accept one blanket bid to cover the entire group of cars offered for sale.

§ 72.63 Conditions of sale.

(a) *No recourse.* All personal property and carriers to be sold shall be offered for sale "as is" and without recourse against the United States.

(b) *No guarantee.* No guarantee or warranty, expressed or implied, shall be given or understood in respect of any forfeited property or carrier offered for sale.

(c) *No sale.* (1) The United States reserves the right to reject any and all bids received at public auction and in sealed, competitive bid sales.

(2) When "no sale" is declared for property other than cigars, cigarettes,

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and cigarette papers and tubes, the Director or his delegate shall re-advertise the property for sale.

(3) When "no sale" is declared for cigars, cigarettes, or cigarette papers or tubes, such property shall be destroyed or, if fit for human consumption, be given to a Federal or State hospital or institution.

(d) *One bid.* When only one bid is received for a single unit of property or a carrier offered at public auction or in a sealed, competitive bid sale, such bid shall be considered to be and treated as the highest bid received for that property or carrier.

[T.D. ATF-9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF-183, 49 FR 37061, Sept. 21, 1984]

§ 72.64 Terms of sale.

The terms of sale shall be cash, cashier's check, certified check, or postal money order, in the amount of the accepted bid.

§ 72.65 Sale of forfeited tobacco products and cigarette papers and tubes.

All tobacco products and cigarette papers and tubes forfeited under the internal revenue laws shall be sold at a price which will include the tax due and payable on those forfeited articles. Written, timely notice shall be given by the Director or his delegate to the manufacturer of any such forfeited articles offered for sale.

[T.D. ATF-9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF-65, 45 FR 8593, Feb. 8, 1980; T.D. ATF-183, 49 FR 37061, Sept. 21, 1984]

§ 72.66 Purchaser entitled to bill of sale.

Each purchaser of administratively forfeited property, including carriers, shall be entitled to receive a suitable and authentic bill of sale on a form to be provided for the purpose.

§ 72.67 Sale on open, competitive bids.

If the personal property or carrier is to be sold at public auction to the highest bidder on open, competitive bids, the notice of sale shall so specify,

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and state the date, hour, and place of sale.

§ 72.68 Sale on sealed, competitive bids.

If the property or carrier is to be sold to the highest bidder on sealed, competitive bids, the notice of sale shall so specify, and shall state the date, hour, and place of sale, and the date, hour, and place before the sale when and where the property, including carriers, may be viewed by prospective sealed bidders, and necessary information obtained. All sealed bids must be filed with the Director or his delegate before the sale. No bids will be accepted after the sale starts. At the appointed date, hour, and place of sale, all sealed bids timely filed shall be opened in the presence of all bidders attending the sale, who shall have the privilege of inspecting the bids if they so desire.

[T.D. ATF-9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF-183, 49 FR 37061, Sept. 21, 1984]

§ 72.69 Alternative disposition of seized carriers.

(a) *State or local proceedings.* The Director may discontinue forfeiture proceedings instituted under the Customs laws for seizures of carriers under 49 U.S.C. App., Chapter 11 in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. If such forfeiture proceedings are discontinued or dismissed, the Director may transfer the seized property to the appropriate State or local official, and notice of discontinuance or dismissal shall be provided to all known interested parties.

(b) *Transfer to State or local law enforcement agency.* Any carrier forfeited under the Customs laws for seizures under 49 U.S.C. App., Chapter 11 may be transferred by the Director to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property.

(19 U.S.C. 1616)

[T.D. ATF-270, 53 FR 10489, Mar. 31, 1988]

Bureau of Alcohol, Tobacco and Firearms, Treasury

§ 72.81

**Subpart G—Disposal of Forfeited
Firearms, Ammunition, Explosive
Materials, or Contraband
Cigarettes**

rettes, not the subject of an allowed petition, may only be disposed of in accordance with the provisions of 26 U.S.C. 5872(b).

[T.D. ATF-65, 45 FR 8593, Feb. 8, 1980]

§ 72.81 Authority for disposal.

Forfeited firearms, ammunition, explosive materials, or contraband ciga-